

AMENDMENT UNDER 37 C.F.R. §1.114(c)  
U.S. Appln. No. 10/511,685 (Q84077)

REMARKS

Claims 11-14 and 25-35 are presently pending. Claims 11-12, 14, 25 and 29 are hereby amended and new Claim 35 is being added. Support for new Claim 35 can be found, *inter alia*, Claim 11. Hence, the amendments to the claims and the addition of new Claim 35 does not constitute new matter, and thus entry is respectfully requested.

In the Advisory Action, the Examiner has agreed to enter the Amendment After Final filed March 21, 2007, upon the filing of a Notice of Appeal, and indicates that the rejection under 35 U.S.C. § 112, second paragraph has been met by said Amendment After Final.

Accordingly, Applicants file herewith an Request for Continued Examination seeking entry of said Amendment After Final.

However, in the Advisory Action, the Examiner indicates that the Amendment After Final does not place the application in condition for allowance, because the claims are directed to a product, i.e., a microorganism growth substrate, and Applicants' arguments regarding the "suitability" of the prior art composition are not found to be persuasive because the heat-inactivated, bacterial biomass product of Bothe et al is inherently suitable for growth of microorganisms, and the process of sterilization, argued by Applicants, is deemed routine in the art, as evidenced by Larsen & Joergensen and Atlas & Parks.

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For the following additional reasons, Applicants respectfully traverse the Examiner's rejections.

Bothe et al fails to teach each and every element of current Claim 11, for example, Bothe et al fails to teach a "sterilized" nutrient composition. Thus, the Examiner's anticipation rejection is improper and should be withdrawn.

Applicants note that the Examiner refers to a "heat-inactivated, bacterial biomass product". However, the only reference in Bothe et al to heat treatment is in relation to the isolated heterotrophs (see e.g., first line on page 36). There is no disclosure in Bothe et al relating to sterilization of a biomass. Bothe et al focuses on isolation and characterization of the heterotrophs present in a bioreactor culture.

Central to Applicants' invention is the use of a biomass as a microorganism growth substrate. This is neither taught nor suggested in any of the cited prior art. The fact that the current claims require not only a "sterilized nutrient composition", but also the presence of at least one "sterile nutrient" is believed to confer novelty over Bothe et al.

Absent any hint in any of the cited prior art that Applicants' product may find use as a growth substrate, it is also clear that these features are not obvious over the cited prior art, i.e., without realizing that the product may be used in this way, it would not have been obvious that such should be sterilized, much less combined with other sterile nutrients. Hence, the Examiner's obviousness rejection is based on impermissible hindsight.

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The Examiner is requested to note that when using the invention as a growth substrate, in addition to the basic biomass, there is a requirement for a C-containing energy source, e.g., a starch or sugar-based product (see page 4, line 15 of the specification which refers to "carbon sources"). As a result, Applicants hereby amend Claim 11 to recite a "sterile nutrient which is a carbon source". The dependent claims have been amended for purposes of consistency.

In view of the amendments to the claims, and the arguments set forth above, reexamination, reconsideration and allowance are respectfully requested.

The Examiner is invited to contact the undersigned at his Washington telephone number on any questions which might arise.

Respectfully submitted,



Gordon Kit

Registration No. 30,764

SUGHRUE MION, PLLC

Telephone: (202) 293-7060

Facsimile: (202) 293-7860

WASHINGTON OFFICE

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